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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,770	03/30/2004	Kazuhiko Matsumoto	36609	4956

116 7590 10/18/2006

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EXAMINER

HAJNIK, DANIEL F

ART UNIT	PAPER NUMBER
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2628

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/812,770

Applicant(s)

MATSUMOTO, KAZUHIKO

Examiner

Daniel F. Hajnik

Art Unit

2628

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


ULKA CHAUHAN
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: The amendment will not be entered because claims 3 and 4 have been amended, which changes the scope of these claims. Further, claim 1 has been incorporated into claim 2. Claims 3 and 4 have further been amended to now be dependent upon claim 2 instead of claim 1. This changes the scope of the claims 3 and 4 because these claims are now dependent upon the limitations of both claims 1 and 2 instead of only claim 1, thus this combination is considered to create new issues and requires further search and/or consideration..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the following: Claim 2 recites in part, "the server manager performs a control function wherein the volume data from the volume data storage unit is transmitted to the destination image data server computer and additional information is copied from the operative image data server computer to the destination image data server computer." The Examiner asserts that Gehr's teaching of a dynamic server switching system that avoids bottlenecks and maintains a rapid exchange of communication between client and server suggests the limitations of claim 2. However, Gehr's mere teaching of avoiding bottlenecks and maintaining a rapid exchange of communication fails to teach or suggest the claimed additional information copied from an operative image data server computer to a destination image data server computer. In Gehr's system, equivalent servers provide equal data to client processes. In the claimed invention, volume data from the volume data storage unit is transmitted to the destination image data server computer and additional information is copied from the operative image data server computer to the destination image data server computer. The claimed data transmission is different from and not suggested by Gehr. (towards middle-bottom of pg. 7 of remarks)

In regards to the above arguments, the examiner acknowledges that Gehr does not explicitly teach the claimed "additional information". However, Gehr suggests the claimed limitation by teaching of:

"This system dynamically load balancing in the face of failures, handles transient faults and can use a neuromorphic processing element to monitor system activity and rewrite entries in the lists as a function of changing system activity. In this manner, the system provides dynamic server switching for maximum service availability without consuming significant processing resources" (abstract).

The system of Gehr teaches of dynamic switching and changing system activity. It would have been obvious to one of ordinary skill in the art to include "additional information" with the processing jobs of each server in order to better coordinate the server switching and managing the overall flow of the system in order to load balance properly. For example, the additional information can be the system requirements needed updating the list for a particular processing job and can include the duration of time required for processing on a server. This information would aid in more effectively managing the overall system and more effectively switching servers when processing job need to be evaluated as to which server is best suited to handling the processing.

It is noted however, that applicant can overcome the rejection (which relies upon Gehr) in an RCE by elaborating and specifically stating in the claim language what the additional information comprises and what specific data is include in the additional information such that these additional limitations are not suggested by Gehr.